



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2014-0358]

RIN 1625-AA09

Drawbridge Operation Regulation; Missouri River, Atchison, KS

AGENCY: Coast Guard, DHS.

ACTION: Final Rule.

SUMMARY: The Coast Guard is changing the operating schedule that governs the Atchison Railroad Drawbridge, Mile 422.5, across the Missouri River at Atchison, KS. Under this rule the drawbridge will open on signal if at least a two-hour notification is given. This rule change allows the bridge to operate under the customary schedule that has been adopted by the waterway users.

DATES: This rule is effective on [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type USCG-2014-0358 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Eric Washburn, Bridge

Administrator, Western Rivers, Bridge Branch, Coast Guard;
telephone 314-269-2378, e-mail Eric.Washburn@uscg.mil.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
§	Section Symbol
U.S.C.	United States Code

II. Background Information and Regulatory History

On April 10, 2015, we published a notice of proposed rulemaking (NPRM) entitled, "Drawbridge Operation Regulation; Missouri River, Atchison, KS" in the Federal Register (80 FR 19252). We received no comments on the proposed rule. No public meeting was requested, and none was held.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

The Atchison Railroad Drawbridge crosses the Missouri River at mile 422.5 in Atchison, Kansas and operates in accordance with 33 CFR 117.411 and 117.687 which apply to all drawbridges over the Missouri River.. The vertical clearance of the bridge in the closed position is 37.5 feet above zero on this gage. Due to very limited drawspan openings and to codify

the operating schedule that has been adopted by the waterway users, the Union Pacific Railroad requested a two-hour advance notice of opening the bridge's drawspan during the commercial navigation season.

The Union Pacific Railroad has documented the limited number of vessel openings per year at this bridge. This information is available at the Coast Guard Western Rivers, Bridge Branch; see the aforementioned contact information.

Upon this request and further review by the Coast Guard, it was concluded that a two-hour advance notice on drawspan openings of the Atchison Railroad Drawbridge would not create a consistency issue with other bridges on the Missouri River nor adversely affect navigation.

IV. Discussion of Comments, Changes and the Final Rule

The Coast Guard provided a comment period in which no comments were received.

This rule adds special operating requirements codifying the customary advance notice for openings of the Atchison Railroad Bridge under 33 CFR part 117, subpart B as required under 33 CFR 117.8. The proposed change will add a paragraph (b) to 33 CFR 117.411, a reference to this paragraph in 33 CFR 117.687, and allow for bridge drawspan openings to take place provided at least a two-hour advance notice is given.

V. Regulatory Analyses

We developed this rule after considering numerous

statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This proposed rule is not a significant regulatory action and does not require a full assessment.. As a matter of custom in the area, commercial mariners already provide advance notice; therefore this rule has little, if any, impact on current navigation.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are

independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule is neutral to all business entities operating on the waterway and simply requires a two-hour advance notice to open the bridge. As stated above, it is custom in the area to provide advance notice for a requested opening. This rule simply codifies such notice already given as a customary practice. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with,

Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with

Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is

categorically excluded from further review, under figure 2-1, paragraph (32) (e), of the Instruction.

Under figure 2-1, paragraph (32) (e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.411 to read as follows:

§ 117.411 Missouri River.

(a) The draws of the bridges across the Missouri River shall open on signal; except during the winter season between the date of closure and the date of opening of the commercial navigation season as published by the Army Corps of Engineers, the draw need not open unless at least 24 hours advance notice is given.

(b) The draw of the Atchison Railroad Bridge, Mile 422.5, Missouri River need not open unless a two-hour advance notice is given during the commercial navigation season.

3. Revise § 117.687 to read as follows:

§ 117.687 Missouri River.

The draws of the bridges, except for the Atchison Railroad Bridge, Mile 422.5, see § 117.411(b) for further details, across the Missouri River shall open on signal; except during the winter season between the date of closure and date of opening of the commercial navigation season as published by the Army Corps of Engineers, the draws need not open unless at least 24-hours advance notice is given.

Dated: December 11, 2015

D.R. Callahan
Rear Admiral, U.S. Coast Guard
Commander, Eighth Coast Guard District

[FR Doc. 2015-32735 Filed: 12/28/2015 8:45 am; Publication Date: 12/29/2015]